

MILBURN DOWNEY
EUGENE A. CUNNINGHAM

IBLA 80-687

Decided September 30, 1980

Appeal from decision of the California State Office, Bureau of Land Management, holding mining claims CA MC 6276, 6284, and 6285 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work--Mining Claims: Abandonment--Mining Claims: Assessment Work

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording with BLM of the copy of the notice or certificate of location, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

The owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the

previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so, the claims are deemed abandoned and properly declared void.

APPEARANCES: Milburn Downey and Eugene A. Cunningham, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Milburn Downey and Eugene A. Cunningham, hereinafter appellants, appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated May 9, 1980, declaring mining claims Trojan #2, Lady Bug #1 and 2, and Trojan #1, CA MC 6276, CA MC 6484, and CA MC 6485 respectively, void for failure to file evidence of annual assessment work or notice of intention to hold the claims as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), 43 CFR 3833.2-1(a) and (c), and 43 CFR 3833.4.

The Trojan #2 placer claim was located on September 27, 1974, while the two Lady Bug and Trojan #1 claims were located on September 18, 1977. Copies of the location notices were filed with the State Office on September 23 and October 13, 1977. Appellants submitted affidavits of assessment work for all four claims which were received and stamped by BLM on May 29, 1980.

Appellants, in their statement of reasons on appeal, assert that a copy of their evidence of annual assessment work was forwarded by mail to BLM in Sacramento, California, on September 28, 1979. Appellants further assert that on December 3, 1979, appellant Downey contacted BLM and was allegedly told that a backlog existed which caused delays in BLM's filing of notices of assessment work, which in turn caused delay in transmittal of acknowledgements of receipt. Finally, appellants contend that the BLM employee with whom they conversed should have attempted to locate the assessment notices which would have permitted appellants to refile if the documents could not be located.

[1, 2] Appellants located the Trojan #2 placer claim on September 27, 1974. Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), established mandatory procedures for the recordation of information concerning mining claims located on Federal lands prior to and after October 21, 1976. As to claims located prior to that date, the pertinent regulation, 43 CFR 3833.2-1(a), provides in relevant part:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in

the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Therefore, since the Trojan #2 claim was recorded with BLM in 1977, evidence of assessment work or notice of intention to hold was required to be filed with BLM on or before December 30, 1978.

As to the two Lady Bug and Trojan #1 placer claims, located after the enactment of FLPMA, supra, section 314(a) requires that "[t]he owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file * * * either a notice of intention to hold the mining claim * * * [or] an affidavit of assessment work performed thereon." (Emphasis added.) The applicable regulation, 43 CFR 3833.2-1(c), expresses the same requirement specifying that the filings must be "on or before December 30" of each calendar year following the calendar year of the date of location. Therefore, appellants were required to file one of the appropriate documents on or before December 30, 1978, which they did not do.

In the event a mining claimant fails to comply with the recordation requirements, the regulations provide:

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1 * * * and 3833.2 * * * within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

There is no evidence in the file other than appellants' bare assertion to indicate that appellants did, in fact, file affidavits of assessment work or notices of intention to hold the four mining claims. Therefore, when appellants failed to file either affidavits of assessment work or notices of intention to hold, BLM properly held the claims CA MC 6276, 6284, and 6285 to have been abandoned and declared them void. Darlene Y. Haymes, 49 IBLA 243 (1980); Josephine M. Buchen, 46 IBLA 298 (1980); Juan Munoz, 39 IBLA 72 (1979).

Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file this information. Darlene Haymes, supra; Sylvan S. Hewitt, 47 IBLA 393 (1980).

We note that appellants may relocate these claims for locatable minerals subject to valid existing rights and to any intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

